

Roles of the State and Regional Boards in the basin Plan Amendment Process

Regional Board Responsibilities

➤ CWC §13225

- (a) Coordinate with State Board, Other RB's, and State Agencies in regards to WQ
- (b) Encourage and assist in waste disposal programs
- (c) Require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water

Regional Board Responsibilities (cont.)

➤ CWC §13225

- (d) Request enforcement by appropriate federal, state and local agencies of their respective water quality control laws.
- (e) Report rates of compliance with the requirements
- (f) Recommend projects to the State Board which may eligible for any financial assistance.

Regional Board Responsibilities (cont.2)

➤ CWC §13225

- (g) Report any case of suspected contamination in its region
- (h) Provide copies, to the State Board upon request, of any official action
- (i) Consider effect of actions on any other gov't water plan including the California Water Plan
- (j) Encourage coordinated regional planning and action for water quality control

Regional Board Responsibilities (cont.3)

➤ CWC §13225

- (k) In consultation with the state board, identify and post on the Internet a summary list of all enforcement actions undertaken by that regional board and the arrangement of those actions, including any fines assessed. This list shall be updated at least quarterly

Regional Water Board Role

- Must adopt, review and amend basin plans for waters within the region
- Must designate and protect all existing and potential beneficial uses
- May adopt tougher standards than required by federal law
- Must ensure enforcement of Water Quality Standards
- Have major responsibility for ensuring adequate public participation in basin planning process

Regional Water Board Role (cont.)

- Required to periodically review and revise plans
 - Under the Clean Water Act, the Regional Water Boards must conduct triennial review of water quality standards for surface waters
 - Must develop TMDLs for impaired waters, most of which are adopted as basin plan amendments

Considerations in Basin Planning

- Basin Plans are generally implemented by the Regional Boards through WDRs, Waivers, and Enforcement orders
- Basin Plans provide basis for protecting state's waters by identifying beneficial uses and adopting objectives and implementation plans to protect all of those uses
- Waters are also protected by State and federal Anti-Degradation requirements

Additional Considerations

➤ CEQA

- Statute CA Public Resources Code §§21000 et seq.
- Guidelines 14 CCR §§15000 et seq.

➤ Administrative Procedure Act (APA)

➤ Peer Review Statute (Health and Safety Code §57004)

➤ DFG Filing Fee Statute (Fish and Game Code §711.4)

Questions?

➤ Next CEQA

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What is CEQA?

- A process designed to reveal potential environmental impacts of a project
- A vehicle that empowers citizens to influence environmental decision-making
- A *process* not a *permit*
- A legal requirement that can ensure
 - Real public participation
 - Mitigation of adverse impacts, whenever feasible

Who Must Comply with CEQA?

- CEQA requirements apply to California public agencies (state and local)
- Projects proposed by private entities come under CEQA when state or local permits are required

How CEQA Works

- “CEQA is intended to be interpreted in a manner that affords the fullest possible protection of the environment”

(Friends of Mammoth v. Board of Supervisors 8 Cal.3d 247)

- Relies on strict adherence to process as a way to ensure public participation in government decision making

How CEQA Works

- Environmental analysis must include:
 - A description of project
 - Potential significant impacts
 - Review of mitigation and alternatives that will avoid impacts
 - Review of cumulative impacts

- All environmental documents are subject to both *public* and *public agency* review and comment

Finding CEQA

- CEQA statute: Public Resources Code §21000 et seq. (California Environmental Quality Act)
- CEQA Guidelines: 14 CCR §15000 et seq.
- SWRCB implementation regulations: 23 CCR §3720 et seq.
- Updated statute, guidelines, caselaw, other info: <http://www.ceres.ca.gov/ceqa>

What is a “Project?”

- The “whole of an action” that may cause either
 - A **direct physical change** in the environment
 - A reasonably foreseeable **indirect physical change** in the environment
- Public agency issuance of a grant, loan, or other financing of a project
 - Categorical exemption for studies (Guidelines §15306)

What is a “Project?”

- Adoption of a plan or policy that may result in a significant environmental impact
- Issuance of a permit, license, or entitlement
 - NPDES permits are exempt from CEQA

What are Significant Impacts?

- A “significant impact” causes a *substantial* or *potentially substantial* adverse change in physical conditions in the project area
- Environmental review must consider:
 - Direct impacts
 - Reasonably foreseeable indirect impacts
 - Impacts to the environment including impacts *not* regulated by the lead agency

Levels of Analysis

- If the project has no potential for significant adverse impacts:
Negative Declaration
- If significant impacts can be mitigated to insignificance:
Mitigated Negative Declaration
- If potential remains for significant impacts:
Environmental Impact Report

Certified Regulatory Programs

- Agency programs designed to protect the environment and ensure public participation
 - Certified by Secretary of the Resources Agency
- Exempt from document formatting requirements of standard CEQA process (similar content)
 - Examples:
 - Basin Planning and policies including TMDLs (Water Boards)
 - Timber Harvest Plans (Dept of Forestry and Fire Protection)
 - Coastal Development Permits (California Coastal Commission)

Certified Regulatory Programs

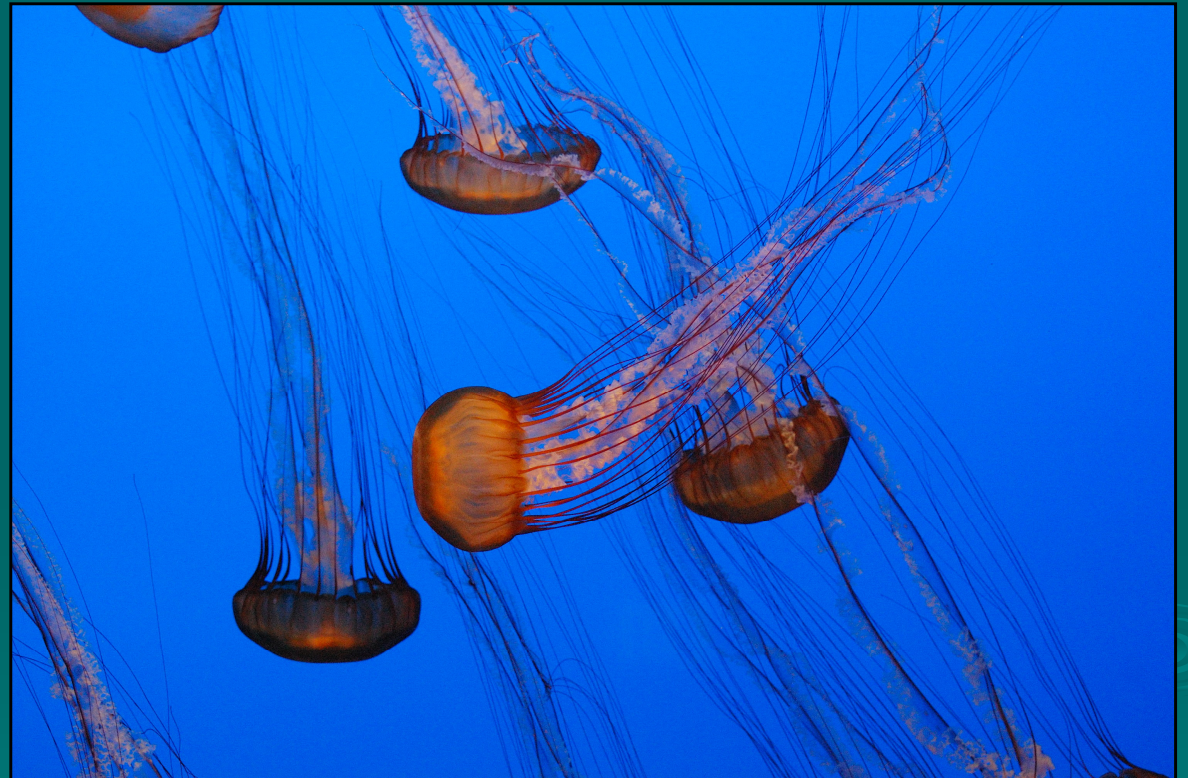
- Subject to most “normal” CEQA requirements
 - Cross-agency consultation
 - Public disclosure and review
 - Notice, scoping, reasonable range of compliance methods, alternatives analysis, mitigation, cumulative impacts analysis, findings (resolution)

CRP Requirements

- Project documents constitute “substitute environmental documentation” (SED)
 - Basin Plan amendment
 - Supporting Staff Report
 - Checklist/environmental analysis
 - Comments
 - Responses
 - Resolution

SED Levels of Analysis

- Neg Dec-level SED
- Mitigated Neg Dec-level SED
- EIR-level SED



Environmental Analysis

- Meets CEQA objectives:
 - Considers potential impacts
 - Considers range of compliance methods
 - Evaluates mitigation, alternatives to the project, cumulative Impacts

CRP Process

- Basin Plan amendments under the CRP follow the public process for Basin Planning
 - Noticing and public review periods
 - SED elements and organization
 - Follow Water Board CEQA regulations (currently under revision)
- State Board SED process satisfies the CEQA procedural requirements as well

Questions?

➤ Next Peer Review

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PEER REVIEW REQUIREMENTS

Health and Safety Code Section 57004

Applies to all Cal/EPA Organizations

“Submit the scientific portions of the proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation.”

Requirements

➤ Requirement

- The Scientific basis for all proposed rules must be submitted for external review

➤ Cal/EPA Guidelines (WB guidelines)

- Expanded coverage
 - Significant “work products”
 - Implementation language of the science (e.g. BP language)
- Adopted by Cal/EPA for all of its agencies
- Managed by Gerald Bowes

Do all Proposed Rules or amendments with scientific components require scientific peer review?

➤ No

- A new application of Peer Reviewed work product that does not significantly depart from its scientific approach
 - (e.g., standards developed by the U.S. EPA, which Cal/EPA adopts). However, **Implementation** of the standards **will** require peer review.
 - If uncertain, discuss this with Gerald Bowes who may discuss with our attorneys.

State Water Board Role

- Must approve all basin plan amendments before they can become effective
- Reviews basin plan amendments to ensure consistency with statewide plans and policies, e.g. Sources of Drinking Water Policy, Toxics Policy, and applicable laws
- In addition to Basin Plan approval, the State Water Board generally exerts influence over Regional Water Boards through petition process, statewide policies, program implementation, and budgetary control

State Water Board Role (Cont.)

- After approving an amendment, the State Water Board shepherds the amendment through OAL and EPA, as necessary, for approval
- State Board can adopt water quality control plans for any surface waters, e.g. the Ocean Plan or the former Tahoe Plan, which supersede any conflicting regional plans

What Decisions can State Board Make

➤ § 13245

- When A RB amendment is submitted SB can
 - Approve
 - Disapprove (“Remand”) in whole or in part
 - Upon resubmission may
 - Approve
 - Or After holding a public hearing in the affected region may revise and approve.
 - Give Direction to Region
 - Give Direction to State Board Staff

Relevant State Law

➤ **Porter-Cologne Water Quality Control Act**

- Water Code §§13240-13247 – includes requirements for basin plan amendments covering all state waters, including ground water
- Water Code §13241 – specifies factors that the Water Boards must consider when adopting objectives, e.g. economic considerations (question as to application to other Board actions)
- Water Code §13170 – authorizes State Water Board to adopt water quality control plans for surface waters
- Water Code §§13140-13147 – covers State Water Board adoption of state policy for water quality control, which is binding on Regional Water Boards, e.g. TMDL Listing Policy